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HOUSE BILL 549

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING ELECTRONIC RECORDING OF
CUSTODIAL INTERROGATIONS; ESTABLISHING PROCEDURES FOR
ELECTRONIC RECORDINGS; ENACTING A NEW SECTION OF THE CRIMINAL
PROCEDURE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Procedure Act is
enacted to read:

" [NEW MATERIAL] ELECTRONIC RECORDINGS OF CUSTODIAL
INTERROGATIONS. --

A. A law enforcement officer shall comply with the
following procedures when taking an oral, written or sign
language statement of a defendant during a custodial
interrogation:

- (1) the custodial interrogation shall be

underscored material = new
[bracketed material] = delete

1 electronically recorded in its entirety;

2 (2) before the custodial interrogation and
3 during the electronic recording, the defendant shall be
4 informed that the interrogation is being electronically
5 recorded and shall be advised of his constitutional rights
6 regarding self-incrimination and the right to counsel. If the
7 defendant knowingly, intelligently and voluntarily waives his
8 constitutional rights, his waiver shall be electronically
9 recorded;

10 (3) the electronic recording device used shall
11 be capable of making an accurate recording, the operator shall
12 be competent and the original recording shall not be altered;
13 and

14 (4) all voices on the electronic recording
15 that are material to the custodial interrogation shall be
16 identified on the recording, along with the date, time and
17 place of the custodial interrogation.

18 B. A law enforcement officer shall comply with the
19 provisions of this section unless he can establish by clear and
20 convincing evidence that:

21 (1) the defendant's statement was voluntary,
22 reliable and made after the defendant knowingly, intelligently
23 and voluntarily waived his constitutional rights; and

24 (2) the law enforcement officer had good cause
25 not to electronically record the entire custodial

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1 interrogation. Examples of good cause are:

2 (a) a location identified in Paragraph
3 (1) of Subsection D of this section was not available and the
4 requisite electronic recording equipment was not readily
5 available; or

6 (b) the electronic recording equipment
7 failed and obtaining replacement equipment was not feasible.

8 C. An electronic recording of a custodial
9 interrogation shall be preserved until the defendant's
10 conviction for an offense related to the interrogation is final
11 and all appeals are exhausted, or the prosecution of the
12 offense is barred by law.

13 D. The provisions of this section shall apply to
14 custodial interrogations in which the defendant is suspected of
15 committing a felony or misdemeanor offense.

16 E. As used in this section:

17 (1) "custodial interrogation" means an
18 interrogation conducted in a police station, police car,
19 courthouse, correctional facility, community correctional
20 center, detention facility or any other structured environment
21 where adequate recording equipment is readily available; and

22 (2) "electronic recording" means a complete
23 and authentic electronic recording created by motion picture,
24 videotape, audiotape or digital media."

25 Section 2. EFFECTIVE DATE. --The effective date of the

. 143842. 1

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1 provisions of this act is July 1, 2003.

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